UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LINDSAY TRANSMISSION, LLC, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 4:12-CV-221-CEJ
v.	)	
OFFICE DEPOT, INC.,	)	
Defendant.	)	

ORDER CERTIFYING THE SETTLEMENT CLASS, PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT, AND APPROVING THE SETTLEMENT CLASS NOTICE

This matter coming before the Court on the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class (the "Motion"), after review and consideration of the Settlement Agreement which, together with all exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in the above-entitled lawsuit (the "Lawsuit"), accompanying documents and evidence, and having been fully advised in the premises, IT IS HEREBY ORDERED and adjudged as follows:

1. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the settlement of this action, as embodied in the terms of the Settlement Agreement, together with all exhibits thereto, attached to the Motion, is hereby preliminarily approved as a fair, reasonable, and adequate settlement of this case in the best interests of the Settlement Class in light of the factual, legal, practical, and procedural considerations raised by this case. The Settlement Agreement is incorporated by reference into this Order (with capitalized terms as set forth in the Settlement Agreement) and is hereby preliminarily adopted as an Order of this Court.

2. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, by stipulation of the parties, and for the purpose of settlement, the Court hereby certifies the following class:

> All persons or entities owning a facsimile number that was published in the 2011–2013 Warrensburg Chamber of Commerce Membership Directory, which may therefore have been sent one or more facsimile advertisements, that was or were in substantially the same form as Exhibits 1, 2, and/or 3 hereto, from the Office Depot Store #2142, located in Warrensburg, Missouri, between February 1, 2011 and August 31, 2011.

Excluded from the Settlement Class are OFFICE DEPOT, INC. ("Office Depot"), including any parent, subsidiary, affiliate or controlled person of Office Depot, as well as its officers, directors, agents, servants or employees of Office Depot and the immediate family members of such persons. The parties expressly agreed to this class definition for settlement purposes.

3. The Court, having reviewed the Motion and having conducted a rigorous analysis of the facts and arguments before the Court, preliminarily finds that the prerequisites of Rule 23 have been satisfied for settlement purposes only and that certification for purposes of settlement is appropriate because (a) the class is so numerous that joinder of all members is impractical; (b) there are questions of law and fact common to the class and they predominate over any questions affecting only individual class members; (c) Plaintiff's claims are typical of the claims of the class; (d) Plaintiff and its attorneys will fairly and adequately protect the interests of the class; and (e) a class action is the superior means of resolving this controversy. The Court hereby certifies a settlement class as set forth above subject to further review of the Court.

4. The Court appoints LINDSAY TRANSMISSION, LLC ("Lindsay Transmission") as the Class Representative of the Settlement Class pursuant to Rule 23(a) for settlement purposes only, and appoints Lindsay Transmission's attorneys (Max G. Margulis of Margulis Law Group, Phillip A. Bock of Bock & Hatch, LLC, and Brian J. Wanca of Anderson + Wanca) as Class Counsel pursuant to Rule 23(g), for settlement purposes only.

5. A hearing (the "Final Approval Hearing") is hereby scheduled to be held before the Court on **Monday, June 23, 2014**, at **10:00 a.m.** for the following purposes:

a. to finally determine whether this action satisfies the applicable prerequisites for class treatment for settlement purposes under Fed. R. Civ. P. 23;

b. to determine whether the proposed settlement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court;

c. to determine whether the Final Approval Order as provided under the Settlement Agreement should be signed, dismissing the Lawsuit with prejudice, and to determine whether the release by the Settlement Class of the Released Parties, as set forth in the Settlement Agreement, should be afforded to the Released Parties;

d. to consider the application by Class Counsel for an award of an incentive award, attorneys' fees, costs, and expenses; and

e. to rule upon such other matters as the Court may deem appropriate.

6. The Court preliminarily finds the proposed settlement to be fair, reasonable, and adequate and reserves the right to finally approve the settlement and to make a determination as to the fees and costs to be awarded to Class Counsel. The Court finds that the benefits provided and available to the Settlement Class appear to be a reasonable compromise of the factually and legally disputed claims in this lawsuit, as evidenced by the pleadings, motions, briefs, and other materials in the Court's files, the fact that the outcome of this dispute remains uncertain, and the

fact that, by the settlement, the parties can avoid the risk and expense attendant to further litigation, trial, and appeal of such claims.

7. The Court preliminarily finds that Class Counsel have provided adequate representation to the Settlement Class. Class Counsel conducted a factual investigation, conducted discovery, engaged in motion practice, and performed an analysis of the relevant facts and law, both with regard to class certification and the merits of the action.

8. By this Order, the Court hereby orders that the Class Notice shall be sent by first class U.S. Mail to the addresses for the individuals and entities listed in the 2011–2013 Warrensburg Chamber of Commerce Membership Directory ("Directory") owning a facsimile number that was published in that Directory. The Court finds and orders that no other notice is necessary.

9. The Claim Administrator shall advise the required Federal and State officials about this settlement as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

10. The Court finds that the form and method set forth in the Settlement Agreement for notifying the Settlement Class of the settlement and its terms and conditions satisfies the requirements of due process and Rule 23(e)(1) of the Federal Rules of Civil Procedure and constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to this notice. That plan is approved and adopted. This Court further finds that the proposed Class Notice (attached to the Settlement Agreement as Exhibit B), and the Claim Form included as part of the Class Notice, comply with Rule 23(e)(1) of the Federal Rules of Civil Procedure, are clearly designed to advise class members of their rights and to protect the rights of such absent class members, and are appropriate as part of the notice plan, and are approved and adopted. The Court orders that the

parties provide the notice to the Class as proposed. The parties are given leave to consult with the Claims Administrator to make minor non-substantive changes (i.e., formatting) without further Court approval.

11. Any member of the Settlement Class who wishes to be excluded from the Settlement Class may request exclusion by submitting a completed request for exclusion from the Settlement Class. To be effective, the request for exclusion must be signed by the member of the Settlement Class and must set forth the class member's name, address, telephone number, and facsimile number from which they received the qualifying unsolicited facsimile advertisement attached hereto as Exhibit 1, 2, and/or 3, along with a statement that the class member wishes to be excluded. The request must be both: (1) sent to or filed with the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, 111 South 10th Street, Suite 3300, St. Louis, Missouri 63102; and (2) must be served by mail upon each of: Margulis Law Group c/o Max G. Margulis, 28 Old Belle Monte Rd., Chesterfield, MO 63017; Fulbright & Jaworski LLP c/o Casey L. Moore, 2200 Ross Avenue, Suite 2800, Dallas, TX 75201; and Office Depot, Inc., Office of the General Counsel, 6600 North Military Trail, Boca Raton, FL 33496. To be considered valid, a request for exclusion must set forth all of this information and must be post marked on or before **May 19, 2014**.

12. The Court will consider objections to the settlement only if such objections and any supporting papers are sent to the Court in writing for filing and post marked on or before **May 19, 2014,** and the objecting class member both: (1) mails to or files with the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, 111 South 10th Street, Suite 3300, St. Louis, Missouri 63102; and (2) mails to each of: Margulis Law Group c/o Max G. Margulis, 28 Old Belle Monte Rd., Chesterfield, MO 63017; Fulbright &

Jaworski LLP c/o Casey L. Moore, 2200 Ross Avenue, Suite 2800, Dallas, TX 75201; and Office Depot, Inc., Office of the General Counsel, 6600 North Military Trail, Boca Raton, FL 33496, within a reasonable time after filing, a written notice, together with all supporting papers and a statement setting forth the class member's objections and the reasons for such objections to the proposed settlement. In order for the Court to consider the objection, the individual or entity objecting must appear at the final approval hearing in **Courtroom 14 North**, on **Monday June 23, 2014**, at **10:00 a.m.** Within the written objection, the class member must include his name, address, telephone number, and his facsimile number where he received the alleged unsolicited facsimile advertisement that was or were in the substantially the same form as those attached hereto as Exhibit 1, 2, and/or 3, so that his/her/its membership in the Settlement Class may be verified. Class members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement.

13. Members of the Settlement Class are not required to attend the final approval hearing or take any other action to indicate their approval of the proposed settlement class.

14. If the Agreement is terminated by any of the Settling Parties in accordance with Section II.22 of the Settlement Agreement, then the Agreement, including any amendment(s) thereof, and this Preliminary Order certifying the Settlement Class and approving the Class Representative and Class Counsel for purposes of the settlement shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each Settling Party shall be restored to his, her, or its respective position as it existed prior to the execution of the Agreement to the maximum extent practicable.

15. The Court hereby sets deadlines and dates for the acts and events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines and dates in the Class Notice:

a. Objections and motions to intervene shall be filed in this Court and postmarked and served on Class Counsel and Office Depot's counsel on or before **May 19, 2014**, or be forever barred;

b. Requests by any Class member to opt out of the settlement must be submitted on or before **May 19, 2014**, or be forever barred. The Court shall rule on all requests for exclusion or opt outs on **June 23, 2014**; and

c. The Fairness Hearing, set forth in the Class Notice, is hereby scheduled for **Monday, June 23, 2014, at 10:00 a.m.** in Courtroom 14 North.

16. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the enforcement of the Agreement.

SIGNED this 10th day of December, 2013.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE